

111TH CONGRESS
1ST SESSION

H. R. 723

To amend the Social Security Act to eliminate the 5-month waiting period for Social Security disability and the 24-month waiting period for Medicare benefits in the cases of individuals with disabling burn injuries.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 27, 2009

Mr. NEAL of Massachusetts introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To amend the Social Security Act to eliminate the 5-month waiting period for Social Security disability and the 24-month waiting period for Medicare benefits in the cases of individuals with disabling burn injuries.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Social Security and
5 Medicare Improved Burn Injury Treatment Access Act of
6 2009”.

7 **SEC. 2. FINDINGS.**

8 Congress makes the following findings:

1 (1) Terrorist acts, such as the September 11,
2 2001, attacks in New York and Washington, DC
3 and attacks in countries throughout the world,
4 major accidental events, chemical plant explosions,
5 airplane crashes, and major industrial accidents, re-
6 sult in a substantial number of burn-injured pa-
7 tients.

8 (2) In most major traumatic events, 25 percent
9 to 30 percent of the injured will require burn care
10 treatment. About one-third of those hospitalized in
11 New York on September 11th had severe burn inju-
12 ries.

13 (3) According to the American Burn Associa-
14 tion (ABA), which is the national professional soci-
15 ety representing hospitals with burn centers, as well
16 as burn surgeons, nurses, therapists, and other
17 members of the burn care team, there are only 128
18 burn centers in the United States. The total burn-
19 bed capacity at all burn centers in the United States
20 is 1,835 beds. Burn centers in four States have
21 closed, with a loss of several beds, which further di-
22 minishes the Nation's ability to handle the mass
23 burn casualties that could result from a major ter-
24 rorist attack.

1 (4) Burn centers are a national resource that
2 must be preserved and strengthened as part of the
3 Nation's preparedness activities to deal with ter-
4 rorist attacks or other disasters that would likely
5 lead to mass burn casualties.

6 (5) Based on a study of over 54,000 burn cases
7 over a 20-year period of time, the ABA in its 2002
8 National Burn Repository Report indicates that 38
9 percent of burn-injured patients treated in burn cen-
10 ters were uninsured. This high level of uncompen-
11 sated care threatens the survival of burn centers, the
12 continued existence of which is essential to the emer-
13 gency preparedness efforts of the United States.

14 (6) Burn injuries are among the most costly to
15 treat and require immediate medical attention.

16 (7) Because of the necessity of providing imme-
17 diate care in the case of burn injuries, the waiting
18 periods established for Medicare coverage for dis-
19 abled burn patients should be waived and it is essen-
20 tial for Medicare to reimburse the costs of such burn
21 treatment to ensure the financial survival of burn
22 centers.

1 **SEC. 3. ELIMINATION OF 5-MONTH SOCIAL SECURITY DIS-**
2 **ABILITY WAITING PERIOD IN CASES OF INDIV-**
3 **IDUALS WITH DISABLING BURN INJURIES.**

4 (a) DISABILITY INSURANCE BENEFITS.—Section
5 223(a) of the Social Security Act (42 U.S.C. 423(a)) is
6 amended by adding at the end the following new para-
7 graph:

8 “(3)(A) In the case of any individual who has a dis-
9 abling burn injury and is not entitled to disability insur-
10 ance benefits under this section for any month solely by
11 reason of the waiting period under clause (i) in the first
12 sentence of paragraph (1), the Commissioner of Social Se-
13 curity shall waive the application of the waiting period,
14 and, notwithstanding clauses (i) and (ii) of the first sen-
15 tence of paragraph (1), such individual shall be entitled
16 to disability insurance benefits for each month, beginning
17 with the first month during all of which such individual
18 is under a disability and in which such individual would
19 become so entitled to such insurance benefits under such
20 sentence but for such waiting period, and ending as pro-
21 vided in paragraph (1).

22 “(B) For purposes of subparagraph (A), the process
23 for determining under paragraph (1) the month in which
24 the disability ceases shall require that the status of the
25 individual’s disability be determined at least once every 3
26 years.

1 “(C) For purposes of subparagraph (A) and sections
2 202(e)(5)(C), 202(f)(6)(C), and 216(i)(2)(A)(ii), an indi-
3 vidual is considered to have a ‘disabling burn injury’ if
4 the individual has a burn injury that satisfies a finding
5 of disability in accordance with the Social Security Admin-
6 istration’s publication, ‘Disability Evaluation under Social
7 Security’ (Blue Book, January 2005) for purposes of es-
8 tablishing eligibility for benefits under this title.”.

9 (b) WIDOW’S INSURANCE BENEFITS BASED ON DIS-
10 ABILITY.—Section 202(e)(5) of such Act (42 U.S.C.
11 402(e)(5)) is amended by adding at the end the following
12 new subparagraph:

13 “(C) In the case of any individual who has a disabling
14 burn injury (as described in section 223(a)(3)(B)) and is
15 not entitled to widow’s insurance benefits under this sec-
16 tion for any month solely by reason of the waiting period
17 under paragraph (1)(F)(i), the Commissioner of Social Se-
18 curity shall waive the application of the waiting period,
19 and, notwithstanding clauses (i) and (ii) of paragraph
20 (1)(F), such individual shall be entitled to widow’s insur-
21 ance benefits for each month, beginning with the first
22 month during all of which she is under a disability and
23 in which she would become so entitled to such insurance
24 benefits under paragraph (1) but for such waiting period,
25 and ending as provided in paragraph (1). For purposes

1 of the previous sentence, in determining under paragraph
 2 (1) the month in which the disability ceases the status of
 3 the individual's disability shall be reviewed at least once
 4 every 3 years.”.

5 (c) WIDOWER'S INSURANCE BENEFITS BASED ON
 6 DISABILITY.—Section 202(f)(5) of such Act (42 U.S.C.
 7 402(f)(5)) is amended by adding at the end the following
 8 new subparagraph:

9 “(C) In the case of any individual who has a disabling
 10 burn injury (as described in section 223(a)(3)(B)) and is
 11 not entitled to widower's insurance benefits under this sec-
 12 tion for any month solely by reason of the waiting period
 13 under paragraph (1)(F)(i), the Commissioner of Social Se-
 14 curity shall waive the application of the waiting period,
 15 and, notwithstanding clauses (i) and (ii) of paragraph
 16 (1)(F), such individual shall be entitled to widower's in-
 17 surance benefits for each month, beginning with the first
 18 month during all of which he is under a disability and
 19 in which he would become so entitled to such insurance
 20 benefits under paragraph (1) but for such waiting period,
 21 and ending as provided in paragraph (1). For purposes
 22 of the previous sentence, in determining under paragraph
 23 (1) the month in which the disability ceases the status of
 24 the individual's disability shall be reviewed at least once
 25 every 3 years.”.

1 (d) COMMENCEMENT OF PERIOD OF DISABILITY.—

2 Section 216(i)(2)(A) of such Act (42 U.S.C. 416(i)(2)(A))

3 is amended—

4 (1) by inserting “(i)” after “(2)(A)”;

5 (2) by inserting “(I)” after “but only if”;

6 (3) by inserting “(II)” after “duration or”; and

7 (4) by adding at the end the following new

8 clause:

9 “(ii) In any case in which an individual has a dis-
 10 abling burn injury (as described in section 223(a)(3)(B))
 11 and a month is not included within a period of disability
 12 of such individual solely by reason of the 5-month duration
 13 requirement under clause (i)(I), the Commissioner of So-
 14 cial Security shall waive the application of such require-
 15 ment, and, notwithstanding clause (i)(I), such month shall
 16 be included in a period of disability.”.

17 (e) EFFECTIVE DATES.—The amendments made by

18 subsection (a) shall apply only with respect to benefits

19 under section 223 of the Social Security Act, or under sec-

20 tion 202 of such Act on the basis of the wages and self-

21 employment income of an individual entitled to benefits

22 under such section 223, for months beginning after the

23 date of the enactment of this Act. The amendments made

24 by subsections (b) and (c) shall apply only with respect

25 to benefits based on disability under subsection (e) or (f)

1 of section 202 of the Social Security Act for months after
 2 the date of the enactment of this Act. The amendments
 3 made by subsection (d) shall apply only with respect to
 4 applications for disability determinations filed under title
 5 II of the Social Security Act after the date of the enact-
 6 ment of this Act.

7 **SEC. 4. ELIMINATION OF 24-MONTH MEDICARE DISABILITY**
 8 **WAITING PERIOD IN CASES OF INDIVIDUALS**
 9 **WITH DISABLING BURN INJURIES.**

10 (a) IN GENERAL.—Section 226(h) of the Social Secu-
 11 rity Act (42 U.S.C. 426(h)) is amended—

12 (1) in the matter preceding paragraph (1), by
 13 inserting “or a disabling burn injury (as described
 14 in section 223(a)(3)(B))” after “amyotrophic lateral
 15 sclerosis (ALS)”;

16 (2) by redesignating paragraphs (1), (2), and
 17 (3) as subparagraphs (A), (B), and (C), respectively,
 18 with appropriate indentation and striking “For pur-
 19 poses of” and inserting “(1) For purposes of”; and

20 (3) by adding at the end the following new
 21 paragraphs:

22 “(2) Paragraph (1) shall not apply to an individual
 23 medically determined to have a disabling burn injury (as
 24 so described) if—

1 “(A) on the date such injury occurred such in-
2 dividual was covered under a group health plan (as
3 defined in section 2791 of the Public Health Service
4 Act) or had health insurance coverage (as defined in
5 such section), regardless of the extent to which such
6 plan or coverage provides benefits with respect to
7 such injury; or

8 “(B) after the date of the enactment of the So-
9 cial Security and Medicare Improved Burn Injury
10 Treatment Access Act of 2009, the terms and condi-
11 tions of coverage, with respect to such injury, under
12 the State plan under title XIX of the State in which
13 the individual resides are more restrictive than such
14 terms and conditions as of the day before such date
15 of enactment.

16 “(3) For purposes of applying paragraph (1) in the
17 case of an individual medically determined to have a dis-
18 abling burn injury (as so described), in determining when
19 an individual’s entitlement or status terminates, the status
20 of the individual’s disability shall be reviewed at least once
21 every 3 years.”.

22 (b) EFFECTIVE DATE.—The amendment made by
23 subsection (a) shall apply to benefits under title XVIII of
24 the Social Security Act with respect to items and services

1 furnished in months beginning after the date of the enact-
2 ment of this Act.

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